

*MBA's Legal Issues and Regulatory
Compliance Conference*

May 2, 2006

State Regulators Panel

*Felecia Rotellini
Superintendent*

*Arizona Department of Financial
Institutions*

Arizona Department of Financial Institutions Licensing

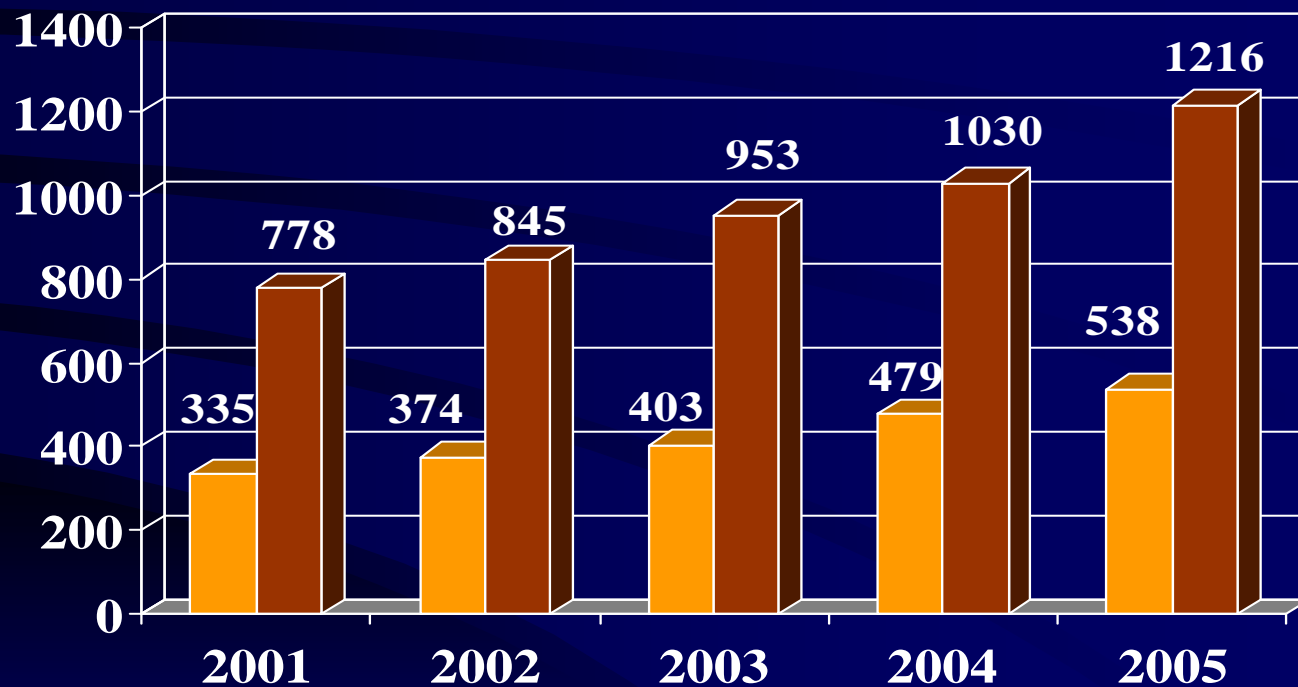
- **Mortgage Banker**
 - Arizona Revised Statutes Title 6, Chapter 9, Article 2
 - Arizona Administrative Code Title 20, Chapter 4, Article 18
- **Mortgage Broker**
 - Arizona Revised Statutes Title 6, Chapter 9, Article 1
 - Arizona Administrative Code Title 20, Chapter 4, Article 9

Arizona Department of Financial Institutions

Licensing

Home Offices

■ Mortgage Banker (BK) ■ Mortgage Broker (MB)



Yearly Average Increase:

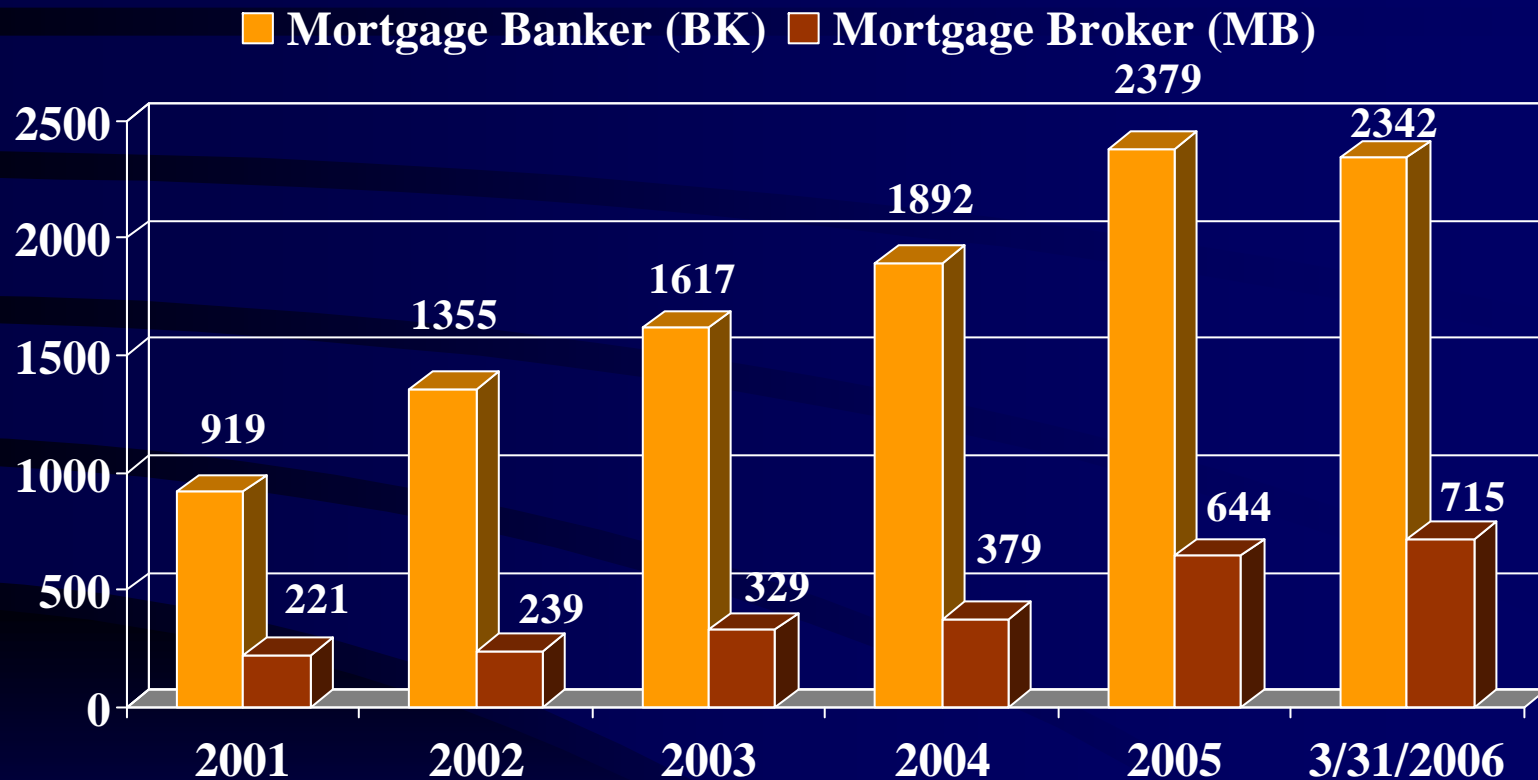
Mortgage Banker 13%

Mortgage Broker 12%

Arizona Department of Financial Institutions

Licensing

Branches



Yearly Average Increase:

Mortgage Banker 26%

Mortgage Broker 34%

Total Home Offices/Branches:

12/31/2001

2253

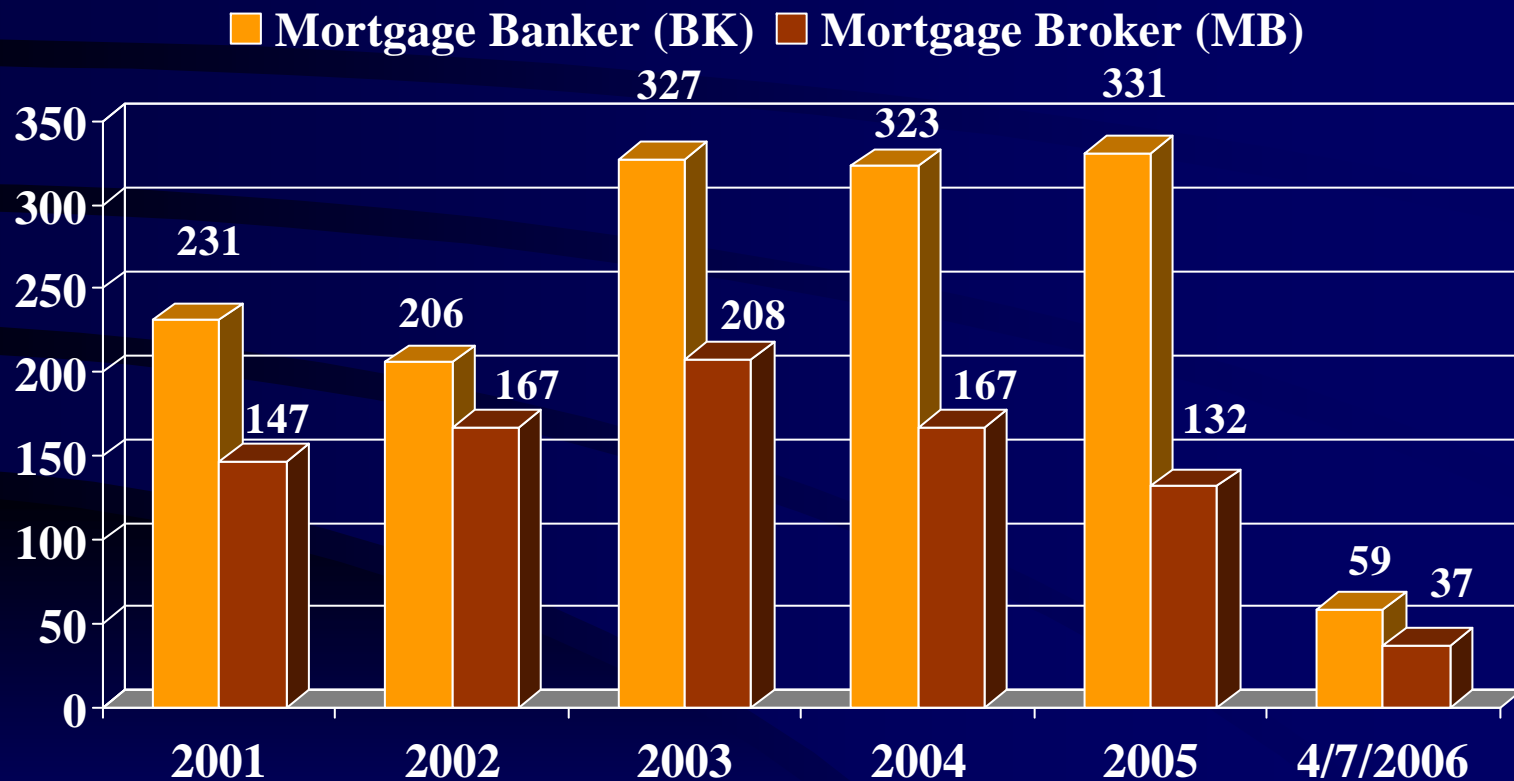
03/31/2006

4911

Arizona Department of Financial Institutions

Consumer Affairs

Number of Complaints Closed



The Department is currently reviewing 127 mortgage lending complaints

Arizona Department of Financial Institutions

Consumer Affairs

Sample Mortgage Solicitation

MIP Refund Notice

The United States Department of Housing and Urban Development (HUD) has a positive balance in the prepaid FHA Mortgage Insurance Premium (MIP)* account of FHA borrowers who originated an FHA loan in the years <<Year1>> through <<Year2>>. Most individuals who paid this Mortgage Insurance Premium are eligible for a refund, either in cash or applied toward a new FHA loan at a better interest rate, without having to completely re-qualify for a new loan.

This is not a mandated refund and the refund process will only be initiated under the direction of the homeowner.

Note: When calling, please have the following information available: File number, property address, monthly payment amount and interest rate.

*MIP is a prepaid insurance used to protect lenders from borrower default. Each month a portion of the MIP is released from a holding account.

What's misleading about the "Refund" Solicitation Letter

- Leaves the impression that the sender is a government agency administering a refund program
- Misleads the recipients into believing that they are just a phone call away from receiving a refund
- Does not state that the only way to get the refund is to refinance your home
- Does not disclose or clearly disclose that the sender is a mortgage company soliciting a loan

Net Branching in Arizona is Prohibited

REGULATORY ALERT*

BK-06-01

February 8, 2006

“Transfer or Assignment of Your Mortgage Banker or Broker License”

A.R.S. §§ 6-903(O) and 6-944(A) state, in pertinent part, that a mortgage broker license and a mortgage banker license are “not transferable or assignable.”

***(Abbreviated version...full version located at www.azdfi.gov)**

Net Branching Regulatory Alert

- Engaging in any of the activities listed below, commonly referred to as “net branching,” can result in the Department taking regulatory enforcement action up to and including license revocation and the imposition of a civil money penalty of not more than five thousand dollars (\$5,000.00) for each violation for each day.
- THIS IS NOT AN EXHAUSTIVE LIST.
- DON'T transfer or assign your mortgage broker or banker license to “branch managers” or “owners.”
- DON'T require branch managers to pay for branch start up costs, including, but not limited to, the cost of branch office licenses, bank account deposits, background checks, accounting fees, HUD license fees, security deposits, training, payroll fees, and loan software fees.
- DON'T require branch managers to sign agreements to pay monthly fees for using your license.

Net Branching Regulatory Alert

- **DON'T** fail to assume responsibility and liability for branch office leases that are rightfully your responsibility. You or your designated officers should sign rent and equipment leases, not branch managers.
- **DON'T** fail to assume the responsibility and liability for branch office equipment leases that are rightfully your responsibility. Branch managers should not sign these leases.
- **DON'T** fail to assume the responsibility and liability for utilities, office supplies and equipment, appraisals, alarm equipment, and any other bills incurred by branches. Bills, utilities, and invoices should be in licensee's name.
- **DON'T** inform the Better Business Bureau that your branches are independent.

Net Branching Regulatory Alert

- **DON'T** fail to account for all branch income and expenses on tax returns and on financial statements.
- **DON'T** fail to maintain physical access to your branches at all times.
- **DON'T** fail to maintain control over the payment of your branch expenses.
- **DON'T** fail to maintain a uniform settlement service fee structure among all of your branch offices. Borrowers should be able to pay the same fees at any office. You should not allow branch managers to set their own fee structure.
- **DON'T** pay income to companies owned by branch managers in an attempt to evade taxes.

Net Branching Regulatory Alert

- **DON'T** fail to employ practices and procedures consistent with all HUD guidelines.
- **DON'T** fail to maintain control over branch bank accounts or allow branch managers to write payroll checks and reimburse themselves for expenses.
- For more information, please access www.hudclips.org and click on “Access HUD Letters and Notices from past years” to read, among other things, Mortgagee Letter 00-15, which addresses “Prohibited Branch Arrangements.”

Common examination issues in Arizona (other than net branching)

- **Buying leads from unlicensed independent contractors**
- **Paying loan officers on a 1099 basis**
- **Change of Control without prior approval**
- **Unlicensed branches**
- **Late or no payment to appraiser**
- **Employee Investigations not completed and not documented**
- **Incomplete fee agreement between lender and borrower**

Examination Results

- **Report of examination with no or minimal violations**
- **Notice of Assessment (NOA) with Civil Money Penalty**
 - May request a hearing or consent
- **Cease and Desist (C&D) with Civil Money Penalty**
 - May request a hearing or consent
- **Notice of Hearing**
 - Any remedy necessary including revocation or suspension of the license
 - Civil money penalty

Trends

- Electronic Licensing of Mortgage Brokers and Bankers – CSBS Mortgage Project
- Loan Originator Licensing – not yet in Arizona
- Regulatory Enforcement Unit
- Examinations based upon complaints – putting out fires
- Real Estate Fraud/Loan Fraud – partnering with other agencies to conserve and utilize resources
- Affiliated Business Arrangements – data gathering, research and partnering with other state and federal agencies
- Resources

Questions?

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